

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues)
Against:)
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Miles Peter Salinas)
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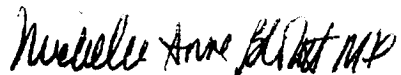
Case No. 800-2015-017576

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Stacie L. Patterson, Esq., attorney for Miles Peter Salinas, for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on November 28, 2016.

IT IS SO ORDERED: November 28, 2016.



Michelle Anne Bholat, M.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

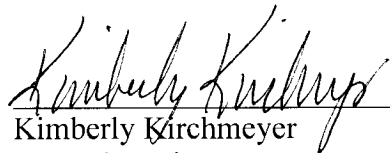
In the Matter of the Statement of Issues Against:)	
)	MBC No. 800-2015-017576
Miles Peter Salinas)	
)	ORDER GRANTING STAY
)	
)	(Government Code Section 11521)
<u>Petitioner</u>)	

Stacy L. Patterson, Esq. on behalf of Miles Peter Salinas, has filed a Petition for Reconsideration of the Decision in this matter with an effective date of November 18, 2016.

Execution is stayed until November 28, 2016.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: November 14, 2016



Kimberly Kirchmeyer
Executive Director
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Statement of)
Issues Against:)**

Miles Peter Salinas)

Case No. 800-2015-017576

Respondent)
_____)

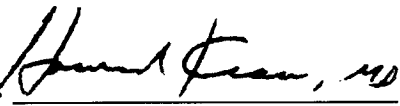
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 18, 2016.

IT IS SO ORDERED October 19, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 
Howard Krauss, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MILES PETER SALINAS,

Applicant/Respondent.

Case No. 800-2015-017576

OAH No. 2016010750

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on May 26, and August 11, 2016.

Christine A. Rhee, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Stacy L. Patterson, Esq., represented Miles Peter Salinas.

The matter was submitted on August 11, 2016.

FACTUAL FINDINGS

1. On October 11, 2005, the Medical Board of California received an application for a Physician and Surgeon's Certificate (certificate/license) or Postgraduate Training Authorization Letter (PTAL) from Miles Peter Salinas (respondent). He filed updates on October 11, 2006, December 18, 2007, October 21, 2008, and November 30, 2009.

The board issued the PTAL.

On October 29, 2010, the board denied respondent's application.

2. On September 3, 2014, the board received a second license application from respondent. On July 17, 2014, respondent certified to the truthfulness of all statements, answers, and representations in the application.

On October 13, 2015, the board denied the application and notified respondent of his right to request a hearing.

Respondent filed a request for hearing, dated October 19, 2015.

3. Kimberly Kirchmeyer filed Statement of Issues, Case No. 800-2015-017576, on December 15, 2015, in her official capacity as executive director of the board.

4. Respondent was born in Santa Clara, California; when he was six months of age, his family moved to Ukiah, California. His education through high school was completed in Ukiah. Following high school, he attended Mendocino College for two years and graduated with a degree as a vocational nurse. The Board of Vocational Nursing and Psychiatric Technicians licensed respondent initially as a vocational nurse (LVN) on January 23, 1997.

Thereafter, respondent transferred to the University of California – Davis for three years. In 2000 he graduated from UC-Davis with a degree in biochemistry. During this time, his mother became ill with lung cancer; after graduation, he returned home to care for his mother and to work on the family farm. His mother died in 2001. Between college and medical school, respondent served in the Naval Reserves as a medic. Between 2002 and 2006, respondent attended Ross University School of Medicine.

5. In 2005, respondent married. In 2006, he adopted his wife's six-year-old daughter. A few months later, he and his wife adopted a seven-month-old son, the child of his wife's cousin, who had been placed in foster care. In December 2006, their first biological (and third) child was born.

6. Following graduation from medical school, respondent worked as an LVN in Soledad, California, which involved a commute of six hours a day. He found the commute difficult and quit. Thereafter, he obtained a job at Tehachapi State Prison, working as an LVN.

On November 7, 2006, he tripped and fell in a parking lot at work suffering a right knee sprain, right ankle sprain and low back contusion. After treatment in Urgent Care, respondent was taken off work.

He was referred for an orthopedic evaluation. On November 29, 2006, respondent rated the pain in his right shoulder as moderate to severe with limited range of motion. He rated the pain in his right knee and ankle as moderate. He stated that he limped due to the pain in his knee and that bending at the waist aggravated the pain in his low back. After an orthopedic evaluation, respondent was placed on temporary total disability and received disability benefits and medical services through California Workers' Compensation.

Between November 2006 and March 2007, respondent received treatment for his injuries. On March 21, 2007, when reexamined, respondent complained of worsening pain

in his right shoulder. The examining physician reported that, based on respondent's complaints, he would not expect to see respondent do heavy lifting or overhead activity.

7. In April 2007, respondent entered into a contract with a homeowner to complete landscape work for \$10,000. In doing so, he used his father's contractor's license, without his father's permission.

8. On April 18 and 21, 2007, insurance investigators filmed respondent doing the landscaping work, which included, among other things, shoveling mulch and rocks into a wheelbarrow, pushing the wheelbarrow and emptying it, raising his arms above his head while holding a tarp, and moving blocks and bricks.

9. On April 25, 2007, respondent returned to the examining physician for treatment and indicated that his condition was unchanged. The physician released respondent to return to work with a restriction of no lifting of objects greater than one pound. Respondent could not be accommodated and therefore remained on temporary total disability.

10. On May 3, 2007, respondent told an insurance investigator that the pain in his right shoulder severely limited his range of motion, leaving him unable to work. He denied having additional income or employment since the incident placing him on disability.

On May 18, 2007, respondent signed a document for Workers' Compensation benefits, stating that he had not earned income since his injury.

On May 30, 2007, respondent was released to full duty work.

11. Between July 2007 and June 2008, respondent participated in a general surgery residency at Kern Medical Center, a University of California – San Diego affiliated program. The residency was difficult for his family for several reasons; he worked long hours; his family moved from the area in which his wife grew up and away from her family; he resigned during the last month of his residency because his wife had a medical issue, and he felt like he needed to be home.

12. Respondent was admitted to the Mercy Redding Family Practice Residency Program commencing on July 1, 2008 through June 30, 2011. He did not complete his residency because the board denied respondent's application for a license to practice medicine in October 2010.

13. On September 29, 2009, in the Superior Court of California, County of Kern, Bakersfield Judicial District, in the case entitled *The People of the State of California v. Miles Peter Salinas*, a criminal complaint was filed, alleging respondent violated:

- Insurance Code section 1871.4, subdivision (a)(1) [making a false statement in a claim for Workers' Compensation benefits, as defined in Labor Code section 3207], a felony;
- Penal Code section 550, subdivision (b)(3) [failure to disclose event affecting benefits], a felony; and
- Business and Professions Code section 7027.3 [falsely using a contractor's license number], a felony.

14. On March 25, 2010, respondent was arrested on criminal charges during his family practice residency. He left the hospital rotation and did not finish his shift. At his behest, his wife telephoned the residency office and left a message that respondent left work due to a family emergency, i.e., that his sister had been taken to the hospital. However, Duane D. Bland, M.D., learned that respondent had left work because he had been arrested. Dr. Bland requested that respondent meet with him the following day.

On March 26, 2010, Dr. Bland met with respondent to discuss the circumstances of his absence. Respondent represented to Dr. Bland that he left work due to his sister's hospitalization in Ukiah and that he needed to leave work on April 23, 2010, to attend to his sister. Then, Dr. Bland informed respondent that he was aware that he had been arrested. Respondent admitted to Dr. Bland that he lied about the reason he was not at work because he was embarrassed to admit the arrest and that April 23, 2010, was a court date. Dr. Bland asked respondent if the arrest had anything to do with work. Respondent explained that it had something to do with an injury. Dr. Bland asked if the injury affected his ability to function as a resident. Respondent said no and expressed his desire to continue in the residency program. Dr. Bland informed respondent that he was suspended.

15. Whether Dr. Bland explained the reason for the suspension during the meeting is unclear. However, by letter, dated April 1, 2010, he did. Among other things, Dr. Bland's letter summarized the reasons for the temporary suspension and served as "a letter of warning with potential consequences for additional transgressions and/or failing to meet expectations of the residency training program"; further, the letter briefly summarized respondent's absence on March 25; respondent's wife's explanation for his absence; and, the meeting the following day, as described in the foregoing paragraph. Specifically, the letter stated:

We presented you with information that indicated you in fact had not left town and were dealing with another situation that had nothing to do with an injured or ill family member. *You admitted to falsifying information regarding your absence.* [Emphasis added.] This behavior is unethical and it violates the ACGME core competency requirements for professionalism, and interpersonal and communication skills. As a consequence,

you were placed on suspension from March 26 to April 1 while the incident was reviewed. Eight days will be added to your academic year to make up for this lost time. This will delay your anticipated graduation date by an equivalent number of days you were on suspension.

During the remainder of your residency training, it is expected that you will maintain high professional and ethical standards. Further episodes of poor communication or *falsification of information* [emphasis added] will lead to termination from the residency training program. . . .

16. On August 9, 2010, respondent completed the second year of the residency program. The completion date was delayed due to respondent's temporary suspension.

17. On August 11, 2010, Dr. Bland completed a Certificate of Completion of ACGME/RCPSC Postgraduate Training (Form L3B). Dr. Bland answered: "yes" to the question, "Did the trainee ever take a leave of absence or break from training?" Dr. Bland answered: "yes" to the question, "Was the trainee ever disciplined or placed under investigation?" Thereafter, he described the facts in Findings 14, 15 and 16 herein.

18. On August 17, 2010, pursuant to a negotiated plea, the Kern County District Attorney amended the criminal complaint as to all three counts, reducing each felony to a misdemeanor. On his plea of nolo contendere, respondent was convicted of violating the charges alleged.

19. In response to questions in his first application for a certificate or PTAL, respondent submitted a letter, dated September 17, 2010, explaining the circumstances surrounding his conviction. He stated that he had been injured on the job in 2007 and that he was granted Workers' Compensation coverage for temporary total disability and medical care. In his explanation of the arrest for Workers' Compensation fraud, respondent stated:

While off work for the aforementioned injuries, I was at a nursery purchasing plants and supplies for my home. I was not going to perform any landscaping or gardening functions myself. However, my father was, at the time, a landscaping contractor and had employees available through that business to assist me in the manual labor portion of the project that I had in mind. I was the one selecting the plants for the project as I had worked in my father's business as a teenager and young man and have some degree of expertise in that business.

While I was at the nursery, I was approached by a woman who was elderly and more than a bit overweight. She asked me if I knew about landscaping and when I told her that I did, she had

some questions regarding her proposed landscaping project. I explained to her that I was not currently engaged in that business. She nonetheless pressed me to help her. I felt for her and agreed to help her with her project. I had the time and the expertise and was able to help her with the purchase of the supplies and plants that she needed and to recruit the manual labor for her that was necessary for her landscaping project. None of the money that she gave me to complete the project went into my pocket. All of the money was paid out in either labor or materials. In fact, I paid for some of the plants out of my own pocket.

While this project was going on, I was still on temporary disability and I was receiving medical care and temporary disability benefits. Accordingly, I was filling out and submitting on a monthly basis the forms for worker's compensation which stated that I was not receiving money from any source other than the worker's compensation benefits. These were true statements, inasmuch as I did not receive any compensation from the above-mentioned landscaping job.

For whatever reason, the worker's compensation insurance company began an investigation into my claim and had their staff investigators check into my claim and my activities while receiving temporary disability. Once they learned that I had supervised the above-referenced landscaping job and were shown a copy of the cancelled check that the lady had given me with which to procure labor and materials, the insurance company concluded that I had been defrauding the worker's compensation system.

Further, respondent explained that, when he was arrested and charged, years after the incident occurred, his lawyer recommended that he take the most advantageous plea agreement because of the passage of time and the difficulty of finding witnesses and evidence necessary to provide a successful defense.

In fact, respondent used his father's contractor's license to bid the landscaping project and provided the labor, as the video by the insurance investigators established.

20. On September 28, 2010, in the criminal case, the court suspended imposition of sentence, placed respondent on three years' probation and ordered him to pay fines of \$525, complete 500 hours of community service by September 28, 2011, serve 180 days in county jail on each count (sentences to be served concurrently), pay \$14,848.16 in restitution, and restricted respondent from handling Workers' Compensation cases.

21. On October 29, 2010, the board denied respondent's first application for a license to practice medicine.

22. On November 9, 2011, on advice of counsel, respondent withdrew his request for hearing on the denial of his application for a license to practice medicine.

23. On May 17, 2011, the Board of Vocational Nursing and Psychiatric Technicians filed Accusation, Case No. VN-2009-3840, seeking to discipline respondent's license as a vocational nurse; the proposed discipline was based on his conviction and acts involving dishonesty in violation of Business and Professions Code sections 490 and 2878.¹

Based on respondent's surrender of his license, admission of the facts, and violations of law, effective March 28, 2012, the Board of Vocational Nursing and Psychiatric Technicians revoked respondent's license as a vocational nurse.

24. On April 26, 2012, pursuant to Penal Code section 1203.4, the court granted respondent's petition to expunge his convictions; the guilty plea was set aside and vacated; a plea of not guilty entered, and the criminal complaint was dismissed.

25. In his second application for his license to practice medicine, dated September 3, 2014, among other things, respondent attached explanatory statements to his answers to question 28 (Were you ever placed on probation for any reason?) and 29 (Were you ever disciplined or placed under investigation?) Respondent explained that he had inadvertently answered "no" to both questions when he should have answered "yes."

Respondent's explanation for question 28 was "Upon my arrest in March of 2010, the Mercy Redding Family Residency Program conducted a one week investigation of the charges during which time, I was suspended (placed on probation)."

Respondent's response to question 29 was "Upon my arrest in March of 2010, the Mercy Redding Family Practice conducted a one week investigation of the charges during which time, I was suspended (placed on probation)."

¹ The facts underlying the accusation were that: (1) on November 7, 2006, respondent allegedly injured his shoulder while at work as a licensed vocational nurse; (2) on November 29, 2006, he was placed on temporary total disability and received disability benefits and medical coverage through the Workers' Compensation program; (3) On April 18 and 21, 2007, he was filmed doing heavy manual landscaping work using his alleged injured shoulder; before and after these observations were made, respondent made statements that he was unable to work due to injuries to his right shoulder. The landscaping work that he was observed performing was a paid contracting job that respondent obtained by illegally using a contractor's license number which he was not authorized to use; and (4) On May 18, 2007, respondent signed an application for workers' compensation benefits, stating that he had not earned any income since his injury.

In fact, the reason for respondent's seven-day suspension from the residency program was that he misrepresented to the program that his unscheduled absence was due to his sister's illness. The program used the time to review and investigate the circumstances, but it was not the reason for the suspension.

26. Respondent has some significant stressors in his life. At the conclusion of medical school, he had amassed almost \$230,000 in school debt. He married while in medical school. By the end of 2006, he was financially responsible for his wife and three children. He felt overcome by pressure to provide for his family and repay the school debt, even and especially after his injury in 2006. He acknowledged that he was dishonest in the manner in which he dealt with the workers' compensation insurance carrier, when he used his father's contractor's license, and in his disclosures to Dr. Bland.

Respondent recognized that he responded poorly to a stressful situation, in a manner that he should not have; he did not look at how it would affect his family, patients and career down the road; his misconduct caused him to be disconnected from the community that he wanted to be a part of.

Respondent has learned from his experiences. He steps back, reviews stressful situations and always reminds himself that nothing is worth compromising his integrity or family trust. He sets boundaries, relies on others, and values his integrity and his family's trust. Now, he handles pressure more skillfully, whether the source of stress is from work, family or another source.

Respondent has learned better ways to cope with stress. He has learned that stress is a temporary situation; he has learned in such situations to ask for help when he needs it. He has worked diligently to be open and honest. Since 2007 he and his wife have faced financial challenges, and he and his wife have chosen to cope with the circumstances with integrity. Now, when he feels financial pressure, respondent looks at the big picture, sets the budget, consults his wife and does not live outside his family's means.

27. Respondent obtained additional education to cope with his finances and stress.

In order to manage his finances and practical matters, he has taken business and ethics courses at El Camino College.

He completed "much of the Landmark curriculum," a program that helps individuals become more aware of themselves and the effect they have on themselves and those around them.

28. On April 22, 2016, David E. McGee-Williams, Ph.D. (Dr. McGee-Williams), completed a psychological evaluation of respondent and thereafter issued a report. Lynne Pappas, M.D. (Dr. Pappas) asked Dr. McGee-Williams to assess respondent. Dr. Pappas is a pediatric psychiatrist in the community in which Dr. McGee-Williams practiced; often he referred clients to her for medications. He has known Dr. Pappas for more than 20 years.

Based on his education, training and experience, Dr. McGee-Williams was qualified to perform an evaluation and issued an opinion about respondent's present level of psychological/emotional functioning.

Dr. McGee-Williams's assessment included:

- Administration of the Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) [an instrument that measures personality structure and psychopathology], and Millon Clinical Multiaxial Inventory III (MCMI-III) [this instrument provides a measure of 24 personality disorders and clinical syndromes for adults undergoing psychological assessment],
- Personal interview of respondent (two and one-half hours),
- Review of documents provided by respondent's attorney (Statement to Respondent, dated November 17, 2015, Request for Discovery, dated November 17, 2015, and Statement of Issues, dated December 15, 2015)

29. Dr. McGee-Williams described his assessment results. There was no evidence of dereistic thinking, thought disorder or mood disorder. Respondent was calm, attentive and answered all questions directly and completely. On multiple occasions, he admitted his shortcomings, poor judgment, personal fears and actual guilt without prompting by Dr. McGee-Williams.

Based on the results of the MMPI-2, respondent was deemed to be "open and cooperative." The resulting clinical and content scale profiles are valid and considered a good indication of his present level of personality functioning. His cooperative performance was viewed as a positive indication of his involvement with the evaluation. He was seen as somewhat tense and having a tendency to overreact to minor problems with psychological distress and symptoms. He was seen as somewhat rigid, moralist and perfectionist in his approach to life. He demonstrated a tendency to deny problems and "to look on the bright side." He endorsed a number of items that suggested that he was experiencing low morale and a depressed mood. These findings were not unusual considering his current situation with the board. Overall, there was little to suggest any significant anxiety state, significant depression, persecutory ideation, antisocial attitudes, deviant thinking or substance abuse.

Based on the results of the MCMI-III, respondent possessed some obsessive-compulsive personality traits, self-defeating personality features and some avoidant personality features. These were considered mild. There was some evidence of mild anxiety. He was seen as generally cooperative, amiable, often overtly conforming and typically avoiding disturbing thoughts and troublesome responsibilities. Analysis of clinical scales found elevations in the areas of compulsive behavior and anxiety. There was no evidence whatsoever of thought disorder, delusional disorder or mild depression.

Dr. McGee-Williams explained that he was looking to find out, among other things, if respondent was a sociopath, psychopath, had tendencies to be dishonest, suffered mental disorders or had severe depression.

After his assessment, Dr. McGee-Williams concluded: “all in all he [respondent] was pretty normal.”

30. Respondent described his employment history since his residency. Between February 2015 and February 2016, respondent worked as a Clinical Documentation Specialist. In February 2016, respondent began employment at Stanford University Hospital in the same position and continued in the position on the hearing date. The position requires a medical degree but not a license to practice medicine.

31. Respondent provided a witness and three letters in support of his application for a certificate.

32. Gyanendra Bhatta testified as a witness and submitted a letter. He was respondent’s supervisor at Desert Valley Hospital in Victorville, where respondent worked as a Clinical Documentation Specialist for one year. Mr. Bhatta noted that: “they hoped respondent would obtain his license and begin working as a physician.” He described respondent to be a conscientious and careful person. He explained that respondent interacted in an open and forthright manner with staff and providers. Mr. Bhatta found it difficult to believe that the person he knows broke the law. In Mr. Bhatta’s opinion, respondent “will be an excellent physician if granted the opportunity.”

33. While in his family practice residency, Dr. Pappas served as respondent’s attending and preceptor for psychiatry training required to fulfill his residency. They have maintained a relationship since his termination from the program for the “alleged fraud activity.”² She is in the unique position to discuss his competence and the evolution of his character. She believes that he is a phenomenal physician, knowledgeable and caring.

In her letter, Dr. Pappas stated, in part:

While I am unable to render an opinion about the allegations and Miles [sic] guilt or innocence concerning the accusations leading to his current situation, I am able to speak to his character and never waning drive to not forsake the process before him. By far, Miles stands out among his peers that I have taught in the residency as a man undaunted by trials or tribulations. More importantly, he has embraced all the struggles that accompanied his termination in a light of positivity virtually unheard of in our day. Repeatedly he has voiced the benefits to his character gained by suffering the

² “Alleged fraud activity” are Dr. Pappas’ words.

hardships affecting finances, family and day to day [sic] function. He stands today a man of even greater integrity than he was when the crisis hit. Miles has never externalized blame for the situation nor has he sought to condemn the institutions rendering decisions about his medical career. He has methodically pursued in all ways possible the opportunity for the medical board and those making decisions about his future as a physician to see him in a different light. The hope is that the results of the psychological assessment he received recently by Dr. David McGee Williams will carry the weight due as an expert opinion concerning Miles, an opinion yielding no evidence of character pathology, but rather indications that he is a man whose dedication to caring for others is so pervasive that he often does not say no to one in need. . . .

My prayer is that in this time when medicine is being greatly challenged to produce doctors who can withstand the forces dehumanizing patients and care, the board will see fit to grant Miles an opportunity to offer his gifts in the art of medicine to so many in need.

34. Steven C. Namihas, M.D., submitted a letter of support, dated June 7, 2016. He was the associate director of respondent's residency program from July 2008 to November 2010. Dr. Namihas met regularly with respondent as his academic advisor. Dr. Namihas stated: "Although respondent had difficulties in his residency training, he showed significant improvement in just about every area. His evaluations in the last four months were consistently above average." He wrote: "In summary, Dr. Salinas performed very well on his final clinical rotations, showing significant improvement, particularly relating to communication skills and interactions with other providers. I believe he has the capacity to be an excellent family physician."

35. Gurpreet K. Sandhoo, D.O., Ph.D., was a preceptor in medicine for respondent's family practice residency program. He got to know respondent on a personal and professional level. Dr. Sandhoo described respondent as a diligent, conscientious physician, compassionate and caring; he interacted with patient families and colleagues in a professional manner.

36. There was no evidence Dr. Namihas or Dr. Sandhoo had knowledge of respondent's legal problems, the facts and circumstances underlying his convictions or the misrepresentations that he made to the board.

37. Despite the mentor-mentee relationship between Dr. Pappas and respondent, there was no evidence that Dr. Pappas was knowledgeable about respondent's legal problems, the facts and circumstances underlying his conviction or the misrepresentations that he made to the board. More significantly, in the interview of respondent by Dr. McGee-

Williams, respondent did not honestly disclose the facts and circumstances underlying his conviction or the incident during his family practice residency program. In his report, Dr. McGee-Williams stated, in part:

While on worker's comp, he tells me that he was approached by a woman in a store about helping her with a small landscaping job. Wanting to help her and having a background in landscaping, he agreed to do it since it appeared to be a rather insignificant amount of work. Upon the completion of the job he gave her a bill and his card from his father's landscaping business and was reimbursed for materials and presumably labor. In May 2007, he states that he received a letter from worker's compensation revealing sub-rosa films of his work for the lady. By this time he had physically improved and asked to just abandon the claim without further compensation. He states that the letter really affected him emotionally. He was very angry at himself and he and his wife were having substantial difficulties largely because he had not listened to her. She had apparently stated when he took the job for the woman that he shouldn't do it because he might hurt himself further and that he did not need to be nice to everybody. He went against her better judgment. He states, "I had been feeling better and wanted to try pulling myself out of the rut that I felt I was in, so I took the landscaping job."

[¶] . . . [¶]

A short while later he was arrested secondary to the Workers Comp investigation. He was jailed overnight and being unable to call the residency director himself, he told his wife to call the residency director and tell him that his sister was in the hospital and that he would contact him the next day. In fact, he went to work the next day and was called into the residency director's office. He states that he was terrified he would lose his job and when the director asked about his sister being sick he states that he looked at the director's face, knew that he knew, and confessed immediately. The director apparently laid out a paper with Miles' picture and writing on it and stated, "It's a small town." Miles was taken off work for a week to allow the residency staff to review the charges. He states that they ultimately decided that they were unrelated to medical care and he returned to his residency in March 2010. . . .

Among other things, respondent did not disclose to Dr. McGee-Williams that he:

- Used his father's contractor's license without his father's permission;
- Was paid \$10,000 to complete the landscaping project;
- Performed the physical work of the job while telling his Workers' Compensation physician that he was in pain and unable to perform basic tasks without pain;
- Asked the residency director for an additional day off because of his sister's illness before disclosing his arrest;
- Was suspended by the residency program because of his misrepresentations to the residency director.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he is qualified to hold the license. In order to prevail, respondent must demonstrate by a preponderance of the evidence that he is qualified to hold a license. (Evid. Code, §§ 115, 500.)

2. Once an administrative agency presents evidence that supports the denial of an application for licensure, the burden falls upon the applicant to demonstrate rehabilitation and fitness to hold the license. The more serious the misconduct and bad character evidence, the stronger the applicant's showing of rehabilitation must be. Cases authorizing the granting of a license on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds. (*In re Glass* (2014) 58 Cal.4th 500, 520.)

3. A preponderance of the evidence establishes that the existence of a factual matter is more likely than not. As one court explained:

“Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Relevant Statutes

4. Business and Professions Code section 2234 states, in part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶] . . . [¶]

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . .

5. Section 2236 states, in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶] . . . [¶]

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

6. Section 475 states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

7. Section 480 states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

8. Section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

9. Section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is

substantially related to the qualifications, functions, and duties of the licensee in question.

Regulations

10. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

11. California Code of Regulations, title 16, section 1309, states:

When considering the denial of a license, certificate or permit under Section 480 of the code, the division, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, certificate or permit, shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).
- (d) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Violations

12. Cause exists to deny respondent's application for a Physician's and Surgeon's Certificate pursuant to Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a)(1), 2234, subdivision (e), and 2236, subdivision (a), in that he has been convicted of crimes that are substantially related to the qualifications, functions or duties of a physician and surgeon.

13. Cause exists to deny respondent's application for a Physician's and Surgeon's Certificate pursuant to Business and Professions Code sections 475, subdivision (a)(3), 480, subdivision (a)(2)[any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself], and 2234, subdivision (e) [unprofessional conduct/dishonest act], in that he has committed dishonest acts.

Evaluation

14. In determining whether respondent should be granted a license, a number of factors must be considered.

15. Pursuant to Business and Professions Code section 2229, protection of the public shall be the board's highest priority in exercising its disciplinary authority; whenever possible, the board shall take action that is calculated to aid in the rehabilitation of the licensee; when rehabilitation and protection of the public are inconsistent, public protection shall be paramount.

16. The question is whether the public can be adequately protected if respondent is granted a license to practice medicine.

Respondent is a young man who has done some good things in his life, has commendable accomplishments but has exercised poor judgment and has engaged in dishonest acts. It has been nine years since he engaged in the misconduct that resulted in his convictions and four years since his convictions were expunged. Nevertheless, there is some question about whether his rehabilitation is complete.

Respondent graduated from college, obtained his license as a vocational nurse, completed medical school and some medical training. In addition, he married and adopted two children. When his mother became ill, he returned home to provide care for her before she passed away. When his wife needed him closer to home during her pregnancy, he ceased his surgical residency and returned home. He adopted his wife's daughter and another of his wife's relatives. Now, he is the father of four and maintains gainful employment that requires that he use his medical education but does not require that he have a license to practice medicine.

Respondent has engaged in dishonest acts on numerous occasions. In order to properly evaluate his misconduct, his acts have been considered chronologically.

He filed his first application for a license to practice medicine in 2005. While this application was pending, in 2007, while receiving workers' compensation benefits, he reported to his physician that he had difficulty shaving and driving, he solicited a landscaping job for which he received payment and illegally used his father's contractor's license; he failed to report the income to the worker's compensation carrier. In March 2010, during his residency, respondent was arrested for the violation and made a misrepresentation to the director of his residency program about the reason that he left work. In September 2010, respondent was convicted of the charges. One month after his conviction, respondent submitted a letter to the board in which he misrepresented the reasons for his conviction.

In 2014, respondent submitted a second application for a license to practice medicine. In that application, respondent stated that the reason that he was suspended by his internal medicine residency program director were the convictions. In truth and in fact, the reason was his dishonesty to the residency program director. This may have been confusing to respondent. As part of the evidence in the hearing, respondent submitted a letter of support from Dr. Pappas and the evaluation from and testimony of Dr. McGee-Williams, the psychologist who evaluated him in April 2016. It is unclear whether he was candid with Dr. Pappas about the bases for denial of his application for a license to practice medicine. There is no dispute that respondent misrepresented the facts and circumstances underlying his conviction as well as the reason he was suspended in his family practice residency program to Dr. McGee-Williams. He made the same misrepresentation to him that he did to the board in August 2010. This is troubling considering his testimony about being honest and trustworthy.

17. Physician honesty is critical. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) "There is no other profession in which one passes so completely within the power and control of another as does the medical patient." (*Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564, 578.) "[T]here is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-3, citing *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

18. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1048.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual

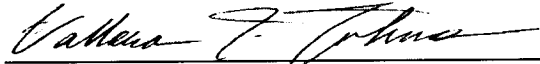
demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

19. Considering the facts, the violations and the foregoing, there is insufficient evidence to establish that respondent is rehabilitated. As such, it is contrary to the public interest for the board to issue a Physician and Surgeon's Certificate to respondent at this time.

ORDER

The application of Miles Peter Salinas for a Physician and Surgeon's Certificate is denied.

DATED: September 12, 2016

A handwritten signature in black ink, appearing to read "Vallera J. Johnson", is written over a horizontal line.

VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. 800-2015-017576

MILES PETER SALINAS

STATEMENT OF ISSUES

**3902 N. Lang Ave.
Covina, CA 91722**

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about September 3, 2014, the Medical Board of California, Department of Consumer Affairs (Board) received an application for a Physician and Surgeon's certificate from Miles Peter Salinas (Respondent). On or about July 17, 2014, Miles Peter Salinas certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 13, 2015.

3. Previously on September 21, 2005, Respondent applied for a Physician and Surgeon's Certificate or Postgraduate Training Authorization Letter (PTAL). The Board received the

1 application on or about October 11, 2005. Respondent filed updates to the PTAL on or about
2 October 11, 2006, December 18, 2007, October 21, 2008, and November 30, 2009. On all
3 applications, Respondent certified under penalty of perjury as to the truthfulness of all statements,
4 answers, and representations in the applications. The Board denied the application for a Physician
5 and Surgeon's Certificate on October 9, 2010.

6 JURISDICTION

7 4. This Statement of Issues is brought before the Medical Board of California (Board),
8 Department of Consumer Affairs, under the authority of the following laws. All section
9 references are to the Business and Professions Code (Code) unless otherwise indicated.

10 5. Section 2234 of the Code states, in pertinent part:

11 "The board shall take action against any licensee who is charged with
12 unprofessional conduct. In addition to other provisions of this article, unprofessional
conduct includes, but is not limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, assisting in
14 or abetting the violation of, or conspiring to violate any provision of this chapter.

15 "

16 "(e) The commission of any act involving dishonesty or corruption which
is substantially related to the qualifications, functions, or duties of a physician and
17 surgeon.

18 ""

19 6. Section 2236 of the Code states, in pertinent part:

20 "(a) The conviction of any offense substantially related to the
21 qualifications, functions, or duties of a physician and surgeon constitutes
unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical
22 Practice Act]. The record of conviction shall be conclusive evidence only of the fact
that the conviction occurred.

23 "

24 "(c) The clerk of the court in which a licensee is convicted of a crime
25 shall, within 48 hours after the conviction, transmit a certified copy of the record of
conviction to the board. The division may inquire into the circumstances surrounding
26 the commission of a crime in order to fix the degree of discipline or to determine if
the conviction is of an offense substantially related to the qualifications, functions, or
27 duties of a physician and surgeon.

28 "(d) A plea or verdict of guilty or a conviction after a plea of nolo
contendere is deemed to be a conviction within the meaning of this section and

1 Section 2236.1. The record of conviction shall be conclusive evidence of the fact that
2 the conviction occurred."

3 7. Section 475 of the Code states:

4 "(a) Notwithstanding any other provisions of this code, the provisions of
5 this division shall govern the denial of licenses on the grounds of:

6 "(1) Knowingly making a false statement of material fact, or knowingly
7 omitting to state a material fact, in an application for a license.

8 "(2) Conviction of a crime.

9 "(3) Commission of any act involving dishonesty, fraud or deceit with the
10 intent to substantially benefit himself or another, or substantially injure another.

11 "(4) Commission of any act which, if done by a licentiate of the business
12 or profession in question, would be grounds for suspension or revocation of license.

13 "(b) Notwithstanding any other provisions of this code, the provisions of
14 this division shall govern the suspension and revocation of licenses on grounds
15 specified in paragraphs (1) and (2) of subdivision (a) .

16 "(c) A license shall not be denied, suspended, or revoked on the grounds
17 of a lack of good moral character or any similar ground relating to an applicant's
18 character, reputation, personality, or habits."

19 8. Section 480 of the Code states:

20 "(a) A board may deny a license regulated by this code on the grounds
21 that the applicant has one of the following:

22 "(1) Been convicted of a crime. A conviction within the meaning of this
23 section means a plea or verdict of guilty or a conviction following a plea of nolo
24 contendere. Any action that a board is permitted to take following the establishment
25 of a conviction may be taken when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal, or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under the
28 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if
the crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, a person shall not
be denied a license solely on the basis that he or she has been convicted of a felony if
he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a

1 person when considering the denial of a license under subdivision (a) of Section 482.

2 "(c) Notwithstanding any other provisions of this code, a person shall not
3 be denied a license solely on the basis of a conviction that has been dismissed
4 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who
5 has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or
6 1203.41 of the Penal Code shall provide proof of the dismissal.

7 "(d) A board may deny a license regulated by this code on the ground that
8 the applicant knowingly made a false statement of fact required to be revealed in the
9 application for the license."

10 9. Section 490 of the Code states:

11 "(a) In addition to any other action that a board is permitted to take
12 against a licensee, a board may suspend or revoke a license on the ground that the
13 licensee has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which the license
15 was issued.

16 "(b) Notwithstanding any other provision of law, a board may exercise
17 any authority to discipline a licensee for conviction of a crime that is independent of
18 the authority granted under subdivision (a) only if the crime is substantially related to
19 the qualifications, functions, or duties of the business or profession for which the
20 licensee's license was issued.

21 "(c) A conviction within the meaning of this section means a plea or
22 verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
23 board is permitted to take following the establishment of a conviction may be taken
24 when the time for appeal has elapsed, or the judgment of conviction has been affirmed
25 on appeal, or when an order granting probation is made suspending the imposition of
26 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
27 the Penal Code.

28 "(d) The Legislature hereby finds and declares that the application of this
section has been made unclear by the holding in *Petropoulos v. Department of Real
Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
significant number of statutes and regulations in question, resulting in potential harm
to the consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
do not constitute a change to, but rather are declaratory of, existing law."

10. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted
by a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a person
who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties of
the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related

1 to the qualifications, functions, and duties of the licensee in question.

2 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
3 and 'registration.'"

4 11. Title 16 California Code of Regulations section 1360 states:

5 "For the purposes of denial, suspension or revocation of a license,
6 certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the
7 code, a crime or act shall be considered to be substantially related to the
8 qualifications, functions or duties of a person holding a license, certificate or permit
9 under the Medical Practice Act if to a substantial degree it evidences present or
10 potential nfitness of a person holding a license, certificate or permit to perform the
11 functions authorized by the license, certificate or permit in a manner consistent with
12 the public health, safety or welfare. Such crimes or acts shall include but not be
13 limited to the following: Violating or attempting to violate, directly or indirectly, or
14 assisting in or abetting the violation of, or conspiring to violate any provision of the
15 Medical Practice Act."

16 12. Title 16 California Code of Regulations section 1309 states:

17 "When considering the denial of a license, certificate or permit under
18 Section 480 of the code, the division,¹ in evaluating the rehabilitation of the applicant
19 and his or her present eligibility for a license, certificate or permit, shall consider the
20 following criteria:

21 "(a) The nature and severity of the act(s) or crime(s) under consideration
22 as grounds for denial.

23 "(b) Evidence of any act(s) or crime(s) committed subsequent to the
24 act(s) or crime(s) under consideration as grounds for denial which also could be
25 considered as grounds for denial under Section 480.

26 "(c) The time that has elapsed since commission of the act(s) or crime(s)
27 referred to in subsections (a) or (b).

28 "(d) The extent to which the applicant has complied with any terms of
parole, probation, restitution or any other sanctions lawfully imposed against the
applicant.

"(e) Evidence, if any, of rehabilitation submitted by the applicant."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Substantially Related Crime)

13. Respondent's application is subject to denial under sections 475(a)(2), 480(a)(1),
2234(e) and 2236(a) of the Code in that he was convicted of and did commit misdemeanor

¹ Bus. & Prof. Code §2002 provides that the term "division" is deemed to refer to the
Medical Board of California.

1 violations of Insurance Code section 1871.4(A)(2), Penal Code section 550(B)(3), and Business
2 and Professions Code section 7027.3. The circumstances are as follows:

3 14. On or about September 29, 2009, a criminal complaint entitled *People of the State of*
4 *California v. Miles Peter Salinas*, Case No. BF 129521A, was filed in Kern County Superior
5 Court. Count 1 alleges that Respondent violated Insurance Code section 1871.4(A)(2) [making
6 false statements in a claim for Workers' Compensation benefits as defined in Labor Code section
7 3207), Penal Code section 550(b)(3) [failure to disclose event affecting benefits], and Business
8 and Professions Code section 7027.3 [falsely using a contractor's license number]. All were
9 charged as felonies.

10 15. On or about August 17, 2010, pursuant to a negotiated plea, the Kern County District
11 Attorney amended the criminal complaint as to all three counts, which were reduced from felony
12 charges to misdemeanors, and Respondent was convicted on his plea of nolo contendere to all
13 three misdemeanor counts.

14 16. On September 28, 2010, Respondent was sentenced to three years probation. He was
15 order to pay \$525.00 in fines, to complete 500 hours of community service by September 28,
16 2011, to serve 180 days in the county jail on each count (sentences to be served concurrently), and
17 to pay \$14, 848.16 in restitution. Respondent was referred to the work release program, and he
18 was restricted from handling Workers' Compensation cases.

19 17. On April 26, 2012, Respondent's petition under Penal Code section 1203.4 was
20 granted, and his plea was set aside and vacated, a plea of not guilty entered, and the criminal
21 complaint was dismissed.

22 18. The circumstances underlying Respondent's conviction are as follows:

23 a. On or about November 7, 2006, Respondent was employed as a licensed
24 vocational nurse (LVN)² at the California State Prison in Tehachapi. Respondent injured himself
25 at work when he tripped and fell in the parking lot. He was transported to an urgent care facility

26 ² Respondent was issued California LVN License No. VN 179459 on January 23, 1997.
27 On May 17, 2011, Accusation No. VN-2009-3840 was filed against Respondent's LVN license
28 based upon the conviction herein described. In a Decision effective March 28, 2012, the Board of
Vocational Nursing and Psychiatric Technicians adopted a Stipulated Surrender of License.

1 complaining of pain in his right knee, right shoulder, right ankle and lower back. On November
2 29, 2006, after an orthopedic evaluation, Respondent was placed on temporary total disability, and
3 he received disability benefits and medical services through the California Workers'
4 Compensation Program.

5 b. Respondent was re-examined on March 21, 2007, when he complained of
6 worsening pain in his right shoulder. The examining physician reported that based on
7 Respondent's complaints, he would not expect Respondent to do any heavy lifting or overhead
8 activity.

9 c. On April 18 and 21, 2007, insurance investigators filmed Respondent doing
10 landscaping work. Respondent was filmed driving, shoveling mulch and rocks into a
11 wheelbarrow, pushing the wheelbarrow and emptying it, sweeping (at times only with this right
12 arm), raising his arms above his head while holding a tarp, and moving blocks and bricks.

13 d. On April 25, 2007, Respondent returned to see the examining physician and
14 indicated that his condition was unchanged. The physician released Respondent to go back to
15 work with a restriction of no lifting of objects greater than one pound. Respondent could not be
16 accommodated with that restriction and so remained on temporary total disability.

17 e. On May 3, 2007, Respondent told an insurance investigator that the pain in his
18 right shoulder severely limited his range of motion, leaving him unable to work. He denied
19 having any additional income or employment since the incident placing him on disability. On
20 May 18, 2007, he signed a document for Workers' Compensation benefits, stating that he had not
21 earned any income since his injury. On May 30, 2007, Respondent was released to full duty
22 work.

23 19. Therefore, Respondent's application is subject to denial under sections 475(a)(2),
24 480(a)(1), 2234(e) and 2236(a) in that he was convicted of and did commit crimes and dishonest
25 acts in violation of law which are substantially related to the qualifications, functions or duties of
26 a physician and surgeon.

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1 Compensation benefits, did not affect his ability to function as a family practice resident. Based
2 on Respondent's violation of the Mercy Program's human resources policies involving providing
3 inaccurate information regarding the reason for an unscheduled leave of absence, Respondent was
4 suspended from the program for a period of seven (7) days, during which time the program
5 reviewed and investigated the circumstances.

6 25. On August 9, 2010, Respondent completed his second post-graduate year at Mercy.
7 The completion date was delayed due to Respondent's temporary suspension described in
8 paragraph 23, above.

9 Misrepresentations in Applications

10 26. On Respondent's present application for licensure, Respondent attached explanatory
11 statements for his answers to questions 28 (Were you ever placed on probation for any reason?)
12 and 29 (Were you ever disciplined or placed under investigation?). Respondent explained that he
13 had inadvertently answered "no" to both questions when he should have answered "yes." His
14 explanation for question 28 was "Upon my arrest in March of 2010, the Mercy Redding Family
15 Residency Program conducted a one week investigation of the charges during which time I was
16 suspended (placed on probation)." His explanation for question 29 was: "Upon my arrest in
17 March of 2010, the Mercy Redding Family Practice Program conducted a one week investigation
18 of the charges during which time, I was suspended (placed on probation)." In truth and in fact,
19 the reason for Respondent's seven (7) day suspension from the program was that he
20 misrepresented to the program that his unscheduled absence was due to his sister's illness. The
21 time was used by the program to review and investigate the circumstances, but it was not the
22 reason for the suspension.

23 27. On or about September 21, 2005, Respondent filed an application for a Physician and
24 Surgeon's Certificate or postgraduate training authorization letter, and the Board received the
25 application on or about October 11, 2005. The application was denied on October 29, 2010, but
26 the Board had asked many questions concerning Respondent's August 2010 conviction. On
27 September 20, 2010, the Board received a letter from Respondent, dated September 17, 2010,
28 explaining the circumstances surrounding his conviction, and he stated that he had been injured

1 on the job in 2007 and that he was granted Workers' Compensation coverage for temporary total
2 disability and medical care. In explanation of the arrest for Workers' Compensation fraud, he
3 stated:

4 "While off work for the aforementioned injuries, I was at a nursery
5 purchasing plants and supplies for my home. I was not going to perform any
6 landscaping or gardening functions myself. However, my father was, at the time, a
7 landscaping contractor and had employees available through that business to assist me
8 in the manual labor portion of the project that I had in mind. I was the one selecting
9 the plants for the project as I had worked in my father's business as a teenage and
10 young man and have some degree of expertise in that business.

11 "While I was at the nursery, I was approached by a woman who was
12 elderly and more than a bit overweight. She asked me if I knew about landscaping
13 and when I told her that I did, she had some questions regarding her proposed
14 landscaping project. I explained to her that I was not currently engaged in that
15 business. She nonetheless pressed me to help her. I felt for her and agreed to help her
16 with her project. I had the time and the expertise and was able to help her with the
17 purchase of the supplies and plants that she needed and to recruit the manual labor for
18 her that was necessary for her landscaping project. None of the money that she gave
19 me to complete the project went into my pocket. All of the money was paid out in
20 either labor or materials. In fact, I paid for some of the plants out of my own pocket.

21 "While this project was going on, I was still on temporary disability and I
22 was receiving medical care and temporary disability benefits. Accordingly, I was
23 filling out and submitting on a monthly basis the forms for worker's compensation
24 which stated that I was not receiving money from any source other than the worker's
25 compensation benefits. These were true statements, inasmuch as I did not receive any
26 compensation form the above-mentioned landscaping job.

27 "For whatever reason, the worker's compensation insurance company
28 began an investigation into my claim and had their staff investigators check into my
claim and my activities while receiving temporary disability. Once they learned that I
had supervised the above-referenced landscaping job and were shown a copy of the
cancelled check that the lady had given me with which to procure labor and materials,
the insurance company concluded that I had been defrauding the worker's
compensation system."

29 28. Respondent went on to explain in the letter that when he was arrested and charged,
30 years after the incident occurred, his lawyer recommended to take the most advantageous plea
31 arrangement possible because of the passage of time and the difficulty of finding witnesses and
32 evidence necessary to provide a successful defense.

33 29. In truth and in fact, Respondent used his father's contractor's license to bid the
34 landscaping project and did in fact provide the labor himself, as the films taken by insurance
35 investigators showed. In mitigation, Respondent did withdraw his request for hearing on the 2010
36 Statement of Issues on the case and he did truthfully reveal the actions underlying his arrest and

1 conviction in the present application in explanation of his answers to questions 55 and 56 of the
2 application, to wit: "In April 2007, despite receiving the insurance benefits, I worked by
3 landscaping a property. I did not report to worker's compensation the income from this work. I
4 used my father's contracting license when I introduced myself to the client and bid the work."

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Medical Board of California issue a decision:

8 1. Denying the application of Miles Peter Salinas for a Physician and Surgeon's
9 certificate;

10 2. Taking such other and further action as deemed necessary and proper.

11
12 DATED: December 15, 2015


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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